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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,695	04/16/2004	Joseph E. Poquette		9196

7590 01/10/2006  
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EXAMINER
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NEWVILLE, TONI E

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/825,695	POQUETTE, JOSEPH E.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Toni Newville	3671	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/13/2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group 1 in the reply filed on 12/13/2005 is acknowledged. The traversal is on the ground(s) that the implement of claim 15 and the adapter of claims 1-14 must be used with one another. This is not found persuasive because the implement of claim 15 may inherently be attached to many types of adapters, and the adapter of claims 1-14 may inherently be attached to many types of implements.

The requirement is still deemed proper and is therefore made FINAL.

Claim 15 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/13/2005.

### ***Drawings***

2. The drawings are objected to because of the following informalities:
- Fig. 1: Second hollow cross beam second end, between reference characters "13 and "45" should be denoted with the reference character "16" instead of "14".

- Reference character “33” has been used to designate both the bushing mount hole and the mounting plate cut out.
- Reference character “46” is not described in the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claims 5 is objected to because of the following informalities: the limitation “the arm attachment means mounting plate” has no antecedent basis, and it appears that

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claim 5 should depend from claim 3 rather than claim 2, and will be treated as such in this office action.

4. Claims 8 and 14 are objected to because of the following informalities: the preamble of both claims should refer back to device recited in the preamble of the claim from which it depends, in this case the excavator and backhoe attachment adapter. For example, the preamble of claim 14 should read "the excavator and backhoe attachment adapter according to claim 13, the implement attachment means further comprising..." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kishi, US 5324162.

Kishi discloses an excavator and backhoe attachment adapter (Fig. 23) comprising:

- A body (Fig. 23)
- The body having an arm attachment means (426, 410)
- The body having an implement attachment means (426, 430)

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2, 4, 6, 7, and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kishi, US 5324162, in view of Davis, US 2883067.

Regarding claims 2, 9 and 11, Kishi further discloses the excavator and backhoe attachment adapter (Fig. 23) comprising:

- The body having a first hollow beam (425) and an opposite, spaced apart second hollow beam (425),
- The body having a first cross beam (422) and an opposite, spaced apart, second cross beam (423)
- The first cross beam (422) being attached to the first hollow beam (425) and the second hollow beam (425)
- The second cross beam (423) being attached to the first hollow beam (425) and the second hollow beam (425).

Kishi fails to disclose the first (422) and second (423) cross beams being hollow or box-like in form.

Like Kishi, Davis discloses an attachment adapter for a ground-engaging apparatus, including first and second spaced-apart hollow beams (14, 16) and first (10) and second (12) cross beams. Unlike Kishi, Davis further discloses the first (10) and second (12) cross beams being hollow (claim 2), and also shows the second hollow cross beam (12) as being box like in form (Fig. 2) (claim 9) and identical in form to the first hollow beam (claim 11).

Given the suggestion in Davis, it would have been obvious to one of ordinary skill in the art to make the cross beams (Kishi; 422, 423) of Kishi hollow as taught in Davis to improve the mechanical rigidity of the cross beams (Kishi; 422, 423) of Kishi, thereby minimizing bending strains and the potential for mechanical failure.

Regarding claim 4, Kishi discloses the second cross beam member (423) the excavator and backhoe attachment adapter described above regarding claim 2 being tubular in form (Fig. 23).

Regarding claim 6, Kishi further discloses the adapter (Fig. 23) described above regarding claim 2 further comprising:

- The body having a brace (433);
- The brace (433) being attached to the first hollow beam (425) and the second hollow beam (425);

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- The brace (433) being located proximate to the second hollow cross beam (Fig. 23).

Regarding claim 7, Kishi further discloses the adaptor (Fig. 23) as described above regarding claim 2 further comprising the implement attachment means being attached to the first hollow beam (425), the first cross beam (422), and the second hollow beam (425).

Regarding claim 10, Kishi further discloses the adapter (Fig. 23) described above regarding claim 2 as comprising:

- The arm attachment means including a mounting plate (426).
- The mounting plate (426) being attached to the first hollow beam (425) and the second hollow beam (425);
- The arm attachment means including a first upright arm attachment plate (410) and an opposite and spaced apart second upright arm attachment plate (410);
- The first upright arm attachment plate (410) and the second upright arm attachment plate (410) being parallel to one another;
- The first upright arm attachment plate (410) and the second upright arm attachment plate (410) being identical to and mirror images of one another (Fig. 23),



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- The first upright arm attachment plate (410) having a first hole and a second hole passing through it (Fig. 23),
- The first upright arm attachment plate (410) first hole and second hole each having an arm mount sleeve (420, 422) passing through and mounted within them.

Regarding claim 12, Kishi further discloses the adapter (Fig. 23) as described above regarding claim 10 further comprising the arm attachment means mounting plate being attached to the second hollow cross beam (Fig. 23, via 433 and 425).

Regarding claim 13, Kishi further discloses implement attachment means (426) being attached to the first hollow beam (425), the first hollow cross beam (422), and the second hollow beam (425).

9. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kishi, US 5324162, in view of Davis, US 2883067, as applied to claim 2 above, and further in view of Pisco et al, US 6254331.

Regarding claim 3, Kishi and Davis disclose a combination of adapters as described above regarding claim 2, and further comprising:

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- The arm attachment means including a mounting plate (426)
- The mounting plate (426) being attached to the first hollow beam (425) and the second hollow beam (425);
- The arm attachment means including a bushing mount (410);
- The bushing mount (410) having a bushing mount hole (near 420)
- The bushing mount hole having a bushing mount hole diameter.

The combination fails to disclose the arm attachment means (426) including a bushing.

Like the combination, Pisco discloses excavator and backhoe attachment adapter, including arm attachment means (10) including a bushing mount (34, 36) having bushing mount holes (Fig. 1). Unlike the combination, Pisco further discloses the arm attachment means (10) having a bushing, the bushing having an exterior diameter that is inherently less than the bushing mount hole diameter, the bushing being located within the bushing mount hole (column 4 lines 19-22).

Given the suggestion in Pisco, it would have been obvious to one of ordinary skill in the art to including a bushing in the bushing mount holes of the combination (Kishi; near 420) to reinforce the bushing mount and bushing mount holes against cracking or abrasion from the attachment.

Regarding claim 5, Kishi further discloses the arm attachment means mounting plate (426) including a cut out (429).

10. Claims 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kishi, US 5324162, in view of Davis, US 2883067, as applied to claims 7 and 13 above, and further in view of Kaczmarski, US 6499934.

Kishi and Davis disclose a combination of adapters as described above, including an implement attachment means (426), the implement attachment means being a plate having a length, height, and thickness, and comprising a bottom lip (430). The combination fails to disclose holes passing through the plate thickness.

Like the combination, Kaczmarski discloses an adapter (Fig. 2) for a ground-engaging apparatus, including arm attachment means (23) and implement attachment means (30), the implement attachment means being a plate having a length, height, and thickness, and comprising a bottom lip (46). Unlike the combination, Kaczmarski further discloses the implement attachment means (30) having holes (Fig. 2) passing through the plate thickness.

Given the suggestion in Kaczmarski, it would have been obvious to one of ordinary skill in the art to include holes in the implement attachment means (Kishi; 426) of the combination because including holes on the implement attachment plate allows for fasteners to secure a mounted apparatus or associated equipment thereto.

***Conclusion***


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toni Newville whose telephone number is (571) 272 - 1548. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Toni Newville  
December 23, 2005

  
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